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NO. 10, ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

UNITED STATES OF AMERICA,
Plaintiff

v.

STATES OF LOUISIANA,
TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

PETITION OF STATE OF ALABAMA FOR REHEARING

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The defendant State of Alabama hereby petitions the Court for a rehearing of this cause and reconsideration of the Opinion and Judgment rendered on May 31, 1960.

ARGUMENT

The State of Alabama has throughout this case taken the position that the only real question presented is: Does the proper construction of Alabama's southern boundary description give to Alabama more than three miles from coast, but not exceeding three leagues under the Submerged Lands Act?

The Court's Opinion of May 31, 1960, confirms this position, but holds that the description is not sufficient to establish a boundary beyond the coast line and into the Gulf of Mexico as claimed by Alabama. It does not take into consideration equitable considerations and claims in construing the description for the purposes of the Submerged Lands Act.

In reaching this conclusion, the Court dealt mainly with Louisiana's description, and, to avoid, we gather, too much repetition, simply applied the same reasoning and construction to Alabama.

This leaves unanswered some of Alabama's reasonable contentions based upon its own description and the other pertinent matter contained in the Enabling Act.

Alabama has also consistently said that all states on the Gulf of Mexico should be treated alike, and still adheres to that view.

The Court states as to Louisiana that "**to** the Gulf of Mexico," does not mean **into** it for any distance. It also states that Louisiana is to be bounded **"by the said Gulf"** and not by a line located three leagues out into the Gulf.

As we shall show, the Alabama description in no place says that it is bounded "by the said Gulf." It was not so stated by those who drafted the description or by the Congress who approved it.

Also, as we shall show, "to the Gulf of Mexico," as used in the Enabling Act of Alabama, was by the same Act, when read and considered in its entirety, construed by the Congress to mean "on the Gulf of Mexico." This is made clear when viewed in connection with the physical location and designation of the lands and waters themselves which Congress was considering.

The part of the Enabling Act incorporated in the Act of Admission described the boundary in part as follows:

> "thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river . . ."

It is to be seen that this does not in any place

say bounded "by the said Gulf," but the Court has construed this language to mean that it is so bounded.

We pointed out by maps and oral argument that, if Alabama was bounded by the Gulf, the language "including all islands within six leagues of the shore," was meaningless. **This is true for by following the coast line, all islands are included without the addition of "including all islands within six leagues of the shore."**

On oral argument, in answer to the Government's argument that the language was merely precautionary to be sure that all islands were included, we pointed out that "three leagues from shore" would have embraced all of the islands, as the furthermost island was 2.87 leagues from shore. We asked the Court the point-blank question: What is the Court going to do with the **other three leagues,** as Alabama has six in all? This has not been answered by the Court. It is fundamental that all parts of a description must be given meaning, if not in conflict, but here the Court has either construed "six leagues" from shore to mean "three leagues" from shore or has ignored that part of the description. It has not given meaning to the three leagues beyond the three leagues which take in all the islands.

As to that part of the opinion which says that to "the Gulf of Mexico" does not mean **into** it for any distance, these undisputed facts as to Alabama must be considered.

At the time of the Enabling Act and the Act of Admission, Mississippi Sound was then called Pascagola Bay. It was and is the same body of water.

A point ten miles east of the mouth of the River

Pascagola would be a point on Pascagola Bay, now Mississippi Sound. The said Enabling Act contained these important and pertinent provisions:

> "Sec. 3. AND BE IT FURTHER ENACTED, That it shall be the duty of the surveyor of the lands of the United States south of the State of Tennessee, and the surveyor of the public lands in the Alabama territory, to run and cut out the line of demarcation between the State of Mississippi and the state to be formed of the Alabama territory; and if it should appear to said surveyors, that so much of said line designated in the preceding section, running due south, from the north-west corner of Washington County to the Gulf of Mexico, will encroach on the counties of Wayne, Greene, or Jackson, in said State of Mississippi, thence the same shall be so altered as to run in a direct line from the north-west corner of Washington County **to a point on the Gulf of Mexico, ten miles east of the mouth of the River Pascagola.** (Emphasis Supplied) 3 Stat. 489, 490.

Using the same identical reasoning of the Court when it said "to the Gulf of Mexico" does not mean **into** it for any distance, it likewise appears " to a point on the Gulf of Mexico" does not mean that you stop at the **Gulf shore** and does not mean that you are **bounded by the Gulf.**

Ten miles east of the mouth of the River Pascagola, unless considered with the other parts of Alabama's description, namely, "including all islands within six leagues of the shore," would put the point

on Pascagola Bay, now Mississippi Sound. So, having in mind that it was merely moving a line eastward and when considered with the other parts of the description, the corrected point is ten miles east of the mouth of the said river and six leagues out "on the Gulf of Mexico."

The only answer that the Government could make on oral argument to the above was that Congress made a mistake, thinking Pascagola Bay to be the Gulf of Mexico. Congress was fully aware of the location and names of the waters mentioned. It made no mistake as claimed by the Government.

The Court has not dealt with these important admitted facts in construing the description, and the only logical conclusion to be drawn therefrom is one contrary to the Court's present opinion.

CONCLUSION

Alabama has presented, in good faith, this Petition for Rehearing, and has argued it strictly upon a legal basis.

Alabama has heretofore presented the matter from an equitable standpoint, stating in every brief, that the Gulf states should each have three leagues from coast. She states again that they should all be treated alike.

This Court should correct its own mistakes and not wait for Congress to do it. The Petition for Rehearing should be granted and three leagues from coast decreed to Alabama.

Respectfully submitted,

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OF COUNSEL

PROOF OF SERVICE

I, MacDonald Gallion, Attorney General of Alabama, certify that on the 16th day of June, 1960, I mailed copies of the foregoing Petition for Rehearing to the Solicitor General of the United States at the Department of Justice Building, Washington, D. C., and to the Attorneys General of the states of Texas, Louisiana, Mississippi, and Florida.

MacDonald Gallion

MacDONALD GALLION
Attorney General of Alabama

CERTIFICATE

I, MacDonald Gallion, Attorney General of Alabama, certify that the foregoing petition for rehearing is filed in good faith and not for delay.

This 16th day of June, 1960.

MacDonald Gallion

MacDONALD GALLION
Attorney General of Alabama